

same level as those of the plaintiff. So here, we do not think that it makes any difference in the application of the principle that when the appellants acquired the shares in dispute on September 13th, 1898, he was not *then* a co-sharer. He had acquired that status before the date of the institution of either of these two suits. He was on that date a co-sharer in the village, and as such entitled to all the rights (including that of pre-emption) appertaining to that status. If the shares in dispute here had been sold not to appellant but to some third party, a stranger to the village proprietary body, the appellant in right of his purchases of May 4th, 1899, would have been entitled to pre-empt them. For the above reasons we hold that where the plaintiffs respondents and the appellants are on the same level in respect of any of the lands comprised in the disputed property, the plaintiffs are not entitled to pre-emption in respect of these lands.

[The remainder of the judgment dealing merely with questions of fact is not reported.—ED.]

Before Mr. Justice Blair and Mr. Justice Banerji.

MANOHAR DAS (DEFENDANT) *v.* RAM AUTAR PANDE (PLAINTIFF).*

Civil Procedure Code, section 492—Act No. IX of 1872 (Indian Contract Act), section 23—Temporary injunction—Civil Procedure Code, sections 278, 295—Application for rateable share in proceeds of sale not equivalent to an attachment.

Held that an alienation made pending a temporary injunction under section 492 of the Code of Civil Procedure, is not void either under section 23 of the Indian Contract Act, 1872, or any other law. *Delhi and London Bank, Ltd., v. Ram Narain* (1) followed.

Held also that an application under section 295 of the Code of Civil Procedure for a rateable share in the proceeds of the sale of property attached by a creditor other than the applicant, is not equivalent to an attachment, and will be no bar to the judgment-debtor privately selling the property attached for the benefit of the attaching creditor. *Ganga Din v. Khushali* (2) and *Durga Churn Rai Chowdhry v. Monmohini Dasi* (3) followed. *Sorabji Edulji Warden v. Gobind Ramji* (4) dissented from.

THE facts of this case are as follows:—One Manohar Das, on the 12th of June 1898, obtained a simple money decree

* Second Appeal No. 264 of 1901, from a decree of Nawab Muhammad Ishaq Khan, District Judge of Mirzapur, dated the 18th of December, 1900, confirming a decree of Babu Jotendro Mohan Bose, Munsif of Mirzapur, dated the 19th of July, 1900.

(1) (1887) I. L. R., 9 All., 497.

(2) (1885) I. L. R., 7 All., 702.

(3) (1888) I. L. R., 15 Cal., 771.

(4) (1891) I. L. R., 16 Bom., 91.

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against Mahadeo Singh. During the pendency of the suit in which that decree was passed, Manohar Das obtained from the Court an *ad interim* injunction under clause (b) of section 492 of the Code of Civil Procedure forbidding Mahadeo Singh to alienate his property. This injunction was issued on the 20th of May 1898. It appears that one Anant Gir had also obtained a money decree against Mahadeo Singh, and in execution thereof had caused certain property, including the property now in dispute, to be attached. Manohar Das took out execution of his decree and prayed that under section 295 of the Code of Civil Procedure he might be given a rateable share of the assets which might be realized in execution of Anant Gir's decree. Whilst the attachment obtained by Anant Gir was subsisting, the judgment-debtor sold the property in suit to one Ram Autar Pande on the 20th of June, 1899. The purchaser paid to Anant Gir the amount of the decree, and Anant Gir having certified the payment to the Court, satisfaction of the decree was duly recorded and the execution case was struck off the file. Thereupon Manohar Das caused the property purchased by Ram Autar Pande to be attached in execution of his own decree. Ram Autar preferred a claim under section 278 of the Code of Civil Procedure, but it was dismissed. He accordingly filed a suit under section 283 of the Code. The Court of first instance (Munsif of Mirzapur) gave the plaintiff a decree declaring the property in suit not liable to attachment and sale in execution of the defendant's decree, and the lower appellate Court (District Judge of Mirzapur) dismissed the defendant's appeal therefrom. The defendant appealed to the High Court.

Munshi *Ratan Chand*, for the appellant.

Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave*, for the respondent.

BLAIR and BANERJI, JJ.—This appeal arises out of a suit brought by the plaintiff respondent under the following circumstances. The appellant Manohar Das obtained a simple money decree against one Mahadeo Singh, on the 12th of June, 1898. During the pendency of the suit in which that decree was passed, Manohar Das obtained from the Court an *ad interim*

injunction under clause (b) of section 492 of the Code of Civil Procedure, forbidding Mahadeo Singh to alienate his property. This injunction was issued on the 20th of May, 1898. It appears that one Anant Gir had also obtained a money decree against Mahadeo Singh, and in execution thereof had caused certain property, including the property now in dispute, to be attached. Manohar Das took out execution of his decree, and prayed that he should be given, under section 295 of the Code of Civil Procedure, a rateable share of the assets which might be realized in execution of Anant Gir's decree. Whilst the attachment obtained by Anant Gir was subsisting, Mahadeo Singh sold the property in suit to the plaintiff on the 20th of June, 1899. The plaintiff paid to Anant Gir the amount of the decree, and Anant Gir having certified the payment to the Court, satisfaction of the decree was duly recorded and the execution case was struck off the file. Thereupon Manohar Das caused the property purchased by the plaintiff to be attached in execution of his own decree. The plaintiff preferred a claim under section 278 of the Code of Civil Procedure, but it was dismissed. He has consequently brought the present suit under section 283 of the Code of Civil Procedure. He has obtained a decree from both the lower Courts.

The first contention raised on behalf of the appellant Manohar Das is, that the sale in favour of the plaintiff is void, inasmuch as it was effected after the issue of the *ad interim* injunction to which we have referred above. This question is concluded by the ruling of this Court in *The Delhi and London Bank Limited v. Ram Narain* (1). In that case a plea similar to the one before us, was raised, and on precisely the same grounds. Reference was also made to the provisions of section 23 of the Contract Act. This Court held that the effect of a temporary injunction granted under section 492(b) was not to make a subsequent alienation of the property illegal and void within the meaning of section 23 of the Contract Act. We agree with this ruling and with the reasons on which it is based. This disposes of the first contention urged on behalf of the appellant.

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It is next urged that the sale in favour of the plaintiff was void as against the appellant by reason of the provisions of section 276 of the Code of Civil Procedure. This point also is concluded by authority. We may refer to the case of *Ganga Din v. Khushali* (1), which was followed by the Calcutta High Court in the case of *Durga Churn Rai Choudhry v. Monmohini Dasi* (2). The learned vakil for the appellant has relied upon the ruling of the Bombay High Court in *Sorabji Edulji Warden v. Gobind Ramji* (3) in which a contrary view was held, but we prefer to follow the ruling of this Court, which, in our opinion, correctly lays down the law on the subject. The words "shall be void as against all claims enforceable under the attachment" in section 276 of the Code of Civil Procedure cannot, in our judgment, include the claim of a person who has not caused the property of the judgment-debtor to be attached, but has simply asked for a rateable share of the assets which might be realized by the sale of the property of the judgment-debtor. Those words have been, in our judgment, rightly interpreted to mean the claim of the person who has obtained an attachment. They were evidently added to the section in order to remove the ambiguity which existed in the corresponding section of Act No. VIII of 1859. The claim of a person who applies for a rateable distribution of the assets is, in our opinion, not a claim which is enforceable under the attachment placed upon the property at the instance of another judgment-creditor. It is manifest that if the claim of the attaching creditor be discharged, and his decree be recorded as satisfied, the attachment obtained by him must necessarily come to an end. In that case there would be no sale in pursuance of the attachment, and no assets would be realized which might be rateably distributed. Therefore the claim of a person who has applied for a rateable share in assets which might or might not be realized cannot be regarded as a claim enforceable under the attachment. In this view, as Anant Gir's decree was satisfied by the plaintiff, the sale in favour of the plaintiff was not void as against the present appellant.

(1) (1885) I. L. R., 7 All., 702. (2) (1888) I. L. R., 15 Calc., 771
(3) (1891) I. L. R., 16 Bom., 91.

The appellant next contends that the plaint in the case is defective, inasmuch as it was not signed by the plaintiff himself. This contention overlooks the provisions of the proviso to section 51 of the Code of Civil Procedure, under which a plaint may be signed by a person other than the plaintiff who may have been duly authorized in that behalf, if the plaintiff is by reason of absence or for other good cause unable to sign the plaint. In the present case both the Courts below have found that by reason of absence the plaintiff himself was unable to sign the plaint. It was consequently signed with the permission of the Court by a person duly authorized by the plaintiff in that behalf.

A further plea has been raised on behalf of the appellant to the effect that the sale in favour of the plaintiff is a fraudulent transaction under section 53 of the Transfer of Property Act. As the Court below has found that the plaintiff is a transferee in good faith, and for consideration, and that is a finding of fact which cannot be impugned in second appeal, section 53 has no application.

The last contention of the appellant, that full consideration for the sale was not paid by the plaintiff, is disposed of by the finding of the lower Court that non-payment of consideration has not been proved, and that it has not been established that the consideration was inadequate.

The appeal therefore fails, and is dismissed with costs.

Appeal dismissed.

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Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Burkhitt.

JHAMMAN KUNWAR (PLAINTIFF) v. TILOKI (DEFENDANT).*

Act No. XV of 1877 (*Indian Limitation Act*), Schedule II, Article 141.—
Limitation—Suit by a Hindu entitled to possession of immovable property on the death of a Hindu female.

One Hazari Lal died in 1856 possessed of certain immovable property and leaving a son, Jawahir Lal and a widow, Chunni surviving him. Jawahir Lal died in 1861, leaving a widow, Tarsa and a daughter, Jhamman Kunwar. After Jawahir Lal's death the widows, Chunni and Tarsa, divided the property between them, and Chunni's share, after passing through the hands of Chandan,

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* First Appeal No. 175 of 1901 from a decree of Babu Madho Das, Subordinate Judge of Bareilly, dated the 8th of July, 1901.